

FEDERAL COURT OF AUSTRALIA

Vu v Minister for Immigration and Multicultural and Indigenous Affairs

[2005] FCA 1836

MIGRATION - Partner visa - whether Migration Review Tribunal conducted proper review on the merits

Migration Act 1958 (Cth), s 359A

Migration Regulations 1994 (Cth), Sched 2, par 820.211(2), regs 1.15A, 1.15A(3), 1.15A(3)(d)

SAAP v Minister for Immigration and Multicultural and Indigenous Affairs (2005) 215 ALR 162 applied

WAIJ v Minister for Immigration & Multicultural & Indigenous Affairs [2004] FCAFC 74 distinguished

Nassouh v Minister for Immigration & Multicultural Affairs [2000] FCA 788 cited

Minister for Immigration and Multicultural Affairs v Yusuf (2001) 206 CLR 323 cited

**VAN QUANG VU v MINISTER FOR IMMIGRATION AND MULTICULTURAL
AND INDIGENOUS AFFAIRS and MIGRATION REVIEW TRIBUNAL
QUD 55 OF 2004**

SIOPIS J

15 DECEMBER 2005

PERTH

**IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY**

QUD 55 OF 2004

**BETWEEN: VAN QUANG VU
 APPLICANT**

**AND: MINISTER FOR IMMIGRATION AND MULTICULTURAL
 AND INDIGENOUS AFFAIRS
 FIRST RESPONDENT**

**MIGRATION REVIEW TRIBUNAL
SECOND RESPONDENT**

JUDGE: SIOPIS J

DATE OF ORDER: 15 DECEMBER 2005

WHERE MADE: PERTH

THE COURT ORDERS THAT:

- 1 The Migration Review Tribunal is added as the second respondent.
- 2 The application is dismissed.
- 3 The applicant is to pay the first respondent's costs.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

**IN THE FEDERAL COURT OF AUSTRALIA
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 AND INDIGENOUS AFFAIRS
 FIRST RESPONDENT**

**MIGRATION REVIEW TRIBUNAL
SECOND RESPONDENT**

JUDGE: SIOPIS J

DATE: 15 DECEMBER 2005

PLACE: PERTH

REASONS FOR JUDGMENT

- 1 This is an application for judicial review of a decision made by the Migration Review Tribunal ('the Tribunal') on 20 February 2004 affirming the decision of the delegate of the Minister for Immigration and Multicultural and Indigenous Affairs ('the delegate') not to grant the applicant a Partner (Temporary) (Class UK) Subclass 820 visa.
- 2 This application was heard by Cooper J. After the untimely death of Cooper J the parties agreed that the application for judicial review could be determined by another judge of this Court on the basis of an examination of the papers which the parties had filed in Court, the submissions of the parties, and the transcript.
- 3 In accordance with the case of *SAAP v Minister for Immigration and Multicultural and Indigenous Affairs* (2005) 215 ALR 162, I order that the Tribunal be joined as the second respondent.
- 4 For the reasons which follow, it is my view that the application should be dismissed.

Background

- 5 The applicant entered Australia on a visitor's visa on 22 September 1999.
- 6 The applicant married Truong Nga Thi on 27 October 1999. On 13 December 1999 the applicant applied for a Partner (Temporary) (Class UK) visa and a Partner (Residence) visa (Class BS). He included in the application his son who was then resident in Australia on a student visa. I will adopt the nomenclature of the Tribunal by referring to the applicant as the 'visa applicant' and his wife as the 'review applicant'. In the application the visa applicant said that his previous marriage had ended in divorce on 24 November 1995.
- 7 In a declaration in support of the visa application the visa applicant stated that he had first met the review applicant on 9 January 1995 at Saigon airport. His daughter had travelled on the same aeroplane from Australia as the review applicant and his daughter introduced the review applicant to him at the airport. At that time the review applicant was an Australian citizen and was visiting Vietnam. The visa applicant and the review applicant subsequently socialised during the review applicant's stay in Vietnam. Thereafter, the visa applicant and review applicant saw each other on several occasions when the review applicant returned to Vietnam for visits in 1998 and 1999. The visa applicant said that since his arrival in Australia he had resided with the review applicant. He said that he fell in love with the review applicant and they were married on 27 October 1999.
- 8 The review applicant confirmed the events described in the visa applicant's declaration in support of the visa application.
- 9 On 12 June 2002 two officers from the bona fides unit office of the Department of Immigration and Multicultural and Indigenous Affairs ('the Department') in Brisbane attended at 1/73 Koala Street, Moorooka – the address which the visa applicant had given as being the residence of the visa and review applicants. One of the officers made a note of the events that transpired. The following account is recorded in the note.
- 10 The purpose of the visit by the departmental officers was to speak to the visa and review applicants to assess whether they were residing together as spouses. On arrival at the unit at Koala Street the departmental officers were greeted by the visa applicant's son. Also

present in the unit was the visa applicant. The visa applicant's son spoke quite good English whilst the visa applicant spoke almost no English. The visa applicant's son said that only the two of them were present in the unit. The son said that the home was owned by his brother, Tr. The son said that the review applicant had moved two or three weeks ago to her daughter's house but comes back to Koala Street 'one or two days a week to cook'. The son said that the name of the daughter with whom the review applicant was staying was Do Nga Huynh. The son asked the visa applicant for the address and the visa applicant wrote it down as '22 Logan, Ganes' [sic]. An officer ascertained this to be 22 Logan Road, Gailles. The son said that he and his father were the people who actually lived at 1/73 Koala Street, Moorooka. The officers inspected the unit. The unit comprised two bedrooms one a little bigger than the other, the small bedroom contained fluffy toys and trinkets on the desk. The son said that the trinkets and fluffy toys belonged to his sister who was staying there on a student visa. The sister had gone back to Vietnam at the time of the visit. There were also men's clothes in the room. These clothes were identified as belonging to the father, the visa applicant. The clothing in the hanging space was female clothing of a type a younger woman would be expected to wear. The son said that these clothes belonged to his sister. The son pointed to some female clothing that was folded and stored on the floor of the wardrobe, perhaps a dozen items. The son said that these belonged to his stepmother, the review applicant.

- 11 The other bedroom was large and contained a double bed made up with one pillow and a single bed mattress unmade lying on the floor. There was a computer and study material. The only clothes in this room were male clothes. The son said that these were his and some of his fathers. There were no items of female clothing or other female items in this room.
- 12 The son was again asked where his stepmother, the review applicant, was living. He said that she was staying with her daughter, Do, at Logan Road because the daughter's child was sick. He said that she would come back to live at Koala Street when the child was better. One of the departmental officers obtained the telephone number of the daughter, Do, from the son. When the officer telephoned that number, the person on the telephone confirmed that she was in fact the daughter, Do Nga Huynh. The officer asked her where her mother, Mrs Troung Nga Thi, lived. She said that 'she lives with me now'. When asked when the mother moved in with her, she said 'a few months ago'. The daughter then said 'I don't talk to my stepfather and my stepbrother'.

- 13 Later the daughter retracted what she had first said and said instead that her mother and stepfather were previously living with her but they moved to Koala Street a few months ago. She said that they had moved before Christmas. She said that she had been away and last saw her mother last week. The daughter said that she did not have a sick child at the moment. The daughter said that the officer should call her mother at their home in Koala Street. The officer said that he was calling from that address and her mother was not there. The daughter then said that her mother could be with one of her many other children. The daughter then asked if she could speak to her 'stepbrother'. The officer gave the telephone to the son. After a few minutes speaking in Vietnamese, the daughter said that there had been a mistake. The mother was staying at another daughter's house looking after a sick child. The officer asked the daughter for the name of the other daughter and it was given as Phan Dung.
- 14 The officer then rang the other daughter who said she was Phan Dung. He asked if her mother, Mrs Truong Nga Thi was living with her or if she was there then. Phan Dung corrected the officer saying that Mrs Truong was her 'mother in law' not her mother. She then said that her mother in law lives at '22 Logan Road, Gailes with her daughter'. The officer then asked for the name of the daughter with whom her mother in law lived. She said: 'Do Huynh'. The officer asked how long Mrs Truong had been living at the Logan Road address and she said 'several months'. The officer asked the daughter in law if her mother in law lived at Moorooka. The daughter in law said 'No'.
- 15 The officer concluded that he was not satisfied that the review applicant lived at 1/73 Koala Street, Moorooka. The officer said:
- '... The few items of clothing are neatly folded and stored at the bottom floor of the wardrobe, while the only other female clothes, belonging to the applicant's daughter, occupy the hanging space, even though this daughter is overseas. There were no other items in the house to suggest that the sponsor lives there or has been living there at any stage.*
- The inconsistent advice given by the [son], the sponsor's daughter, Do and the sponsor's daughter in law, Phan indicate to me that the sponsor is actually living with Do at 22 Logan Road, Gailes on an indefinite basis, and has been living there for several months at least.'*
- 16 The officer invited the visa applicant to attend an interview the next day, 13 June 2002. The visa applicant attended that interview. There was an interpreter present at that interview.

Statutory background

- 17 The relevant criteria for the Subclass 820 visa is found in par 820.211(2) of Schedule 2 of the Migration Regulations 1994 (Cth) ('the Regulations') which reads:

'(2) An applicant meets the requirements of this subclause if:

(a) the applicant is the spouse of a person who:

(i) is an Australian citizen, an Australian permanent resident or eligible New Zealand citizen'; and

(ii) ...'

- 18 The provisions regarding the definition of spouse are found in reg 1.15A of the Regulations which as relevant state:

'(1) For the purposes of these Regulations, a person is the spouse of another person if the 2 persons are:

(a) in a married relationship, as described in subregulation (1A); or

(b) ...

(1A) Persons are in a married relationship if:

(a) they are married to each other under a marriage that is recognised as valid for the purposes of the Act; and

(b) the Minister is satisfied that:

(i) they have a mutual commitment to a shared life as husband and wife to the exclusion of all others; and

(ii) the relationship between them is genuine and continuing; and

(iii) they:

(A) live together; or

(B) do not live separately and apart on a permanent basis.

(2) ...

(3) *In forming an opinion whether 2 persons are in a married relationship... in relation to an application for:*

(ab) a Special Eligibility (Residence) (Class AO) visa; or

(ad) a Partner (Migrant) (Class BC) visa; or

(ae) a Partner (Provisional) (Class UF) visa; or

(af) a Partner (Residence) (Class BS) visa; or

(ag) a Partner (Temporary) (Class UK) visa;

the Minister must have regard to all of the circumstances of the relationship, including in particular:

(a) the financial aspects of the relationship, including:

(i) any joint ownership of real estate or other major assets; and

(ii) any joint liabilities; and

(iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and

(iv) whether one party to the relationship owes any legal obligation in respect of the other; and

(v) the basis of any sharing of day-to-day household expenses;

(b) the nature of the household, including:

(i) any joint responsibility for care and support of children, if any; and

(ii) the parties' living arrangements; and

(iii) any sharing of responsibility for housework;

(c) the social aspects of the relationship, including:

(i) whether the persons represent themselves to other people as being married or in a de facto relationship with each other;

(ii) the opinion of the person's friends and acquaintances about the nature of the relationship; and

(iii) any basis on which the persons plan and undertake joint social activities;

- (d) *the nature of the persons' commitment to each other, including:*
 - (i) *the duration of the relationship; and*
 - (ii) *the length of time during which the persons have lived together; and*
 - (iii) *the degree of companionship and emotional support that the persons draw from each other; and*
 - (iv) *whether the persons see the relationship as a long-term one.*

(4) ...

- (5) *If 2 persons have been living together at the same address for 6 months or longer, that fact is to be taken to be strong evidence that the relationship is genuine and continuing, but a relationship of shorter duration is not to be taken not to be genuine and continuing only for that reason.'*

The delegate's decision

- 19 On 13 June 2002, the delegate refused the grant of a Partner (Temporary) (Class UK) Subclass 820 visa and a Partner (Residence) (Class BS) Subclass 801 visa to the visa applicant and the visa applicant's son. The delegate produced a record of decision.
- 20 In the record of decision the delegate stated that the visa applicant arrived in Australia on a Subclass 676 visa on 22 September 1999. In his visa application the visa applicant indicated he was still married in Vietnam and that his purpose in visiting Australia was to attend the graduation in Australia of his daughter Vu Thi Thu Huyen, who was in Australia on a student visa. The delegate found that this information was misleading and that he had strong doubts as to the integrity of the statement the visa applicant made in his visitor's application.
- 21 The delegate found that as a result of the departmental officers' home visit, the review applicant lived with her daughter in Gables and had done so for at least several months. He also said that the comments made by the visa applicant's son and the review applicant's daughter during the home visit indicated to him a propensity to provide false and misleading information and present a façade of living together in order to achieve their desired outcome in the residence application and a collusion between the visa applicant, the review applicant and at least one of the review applicant's children to achieve that outcome.

- 22 The delegate concluded that on the basis of the evidence before him he found that the visa and review applicants did not live together as spouses nor did they share the attributes of a spouse relationship as specified in reg 1.15A of the Regulations.
- 23 The delegate found that the visa applicant did not meet the criteria for a grant of a Partner (Temporary) (Class UK) Subclass 820 visa and as such, failed also to meet the criteria for the grant of a Partner (Residence) visa (Class BS) Subclass 801 visa.

Proceedings before the Tribunal

- 24 On 19 June 2002, the visa applicant lodged a review of the delegate's decision. In a letter to the Tribunal he said that his wife, the review applicant, had three daughters living in Queensland at the time of the departmental officers' visit to the unit at Koala Street. These were: Do Tri, Do Nga Bach and Do Nga Huynh. During that visit one of the officers had spoken to Do Nga Huynh, but his wife was then staying with another daughter, Do Nga Bach whose nephew was sick, and his wife had gone there to help 'during night time'. The visa applicant said that he did not know that his wife was staying at her second daughter's house because she had not told him.
- 25 On 30 April 2003, the Tribunal wrote to the visa applicant inviting him to provide the following additional information:

'Evidence that you are in a genuine and continuing relationship with your wife, including evidence as required by reg 1.15A in relation to the financial aspects, social aspects, nature of the relationship, genuine commitment to the relationship and nature of the household.

...

Further evidence in regard to the delegate's suggestion in the decision record that you and your wife are not in a genuine relationship as a result of inconsistent and misleading information provided to the Department.'

- 26 By a letter dated 6 May 2003 the migration agent for the visa applicant sent the Tribunal photographs of the visa and review applicants, greeting cards, Commonwealth Bank statements and telephone bills which related to the period from 1 November 2002 to 25 March 2003 and a letter stating that the visa applicant and his wife had rented the unit at 1/73 Koala Street since 19 June 2002.
- 27 By a letter dated 13 May 2003 the migration agent provided receipts for the purchase of household goods, some of which were in the name of both the visa applicant and the review applicant. Photographs, greeting cards and further copies of telephone accounts in the joint names of the visa and review applicants were also sent.
- 28 By a letter dated 4 July 2003, the migration agent acting on behalf of the visa applicant, sent a letter which enclosed records from Centrelink and two documents containing a list of signatures. One of these documents was said to be from the community soccer team and the other from friends and neighbours. The document said to be from the soccer team contained the signatures beneath the following words:

'To Whom It May Concern:

We have known Mr Van Quang VU who plays in our community soccer team for 3 year. We have known that Mr VU married his wife is Mrs Nga Thi TRUONG. They are recently living at 1/71 Koala Road, Moorooka 4105. With the time for three years Mr VU is member in our team, he is honest and caring person. We often practise and play in the team every week at Inala PARK (LiLac Street Inala Qld 4077).

We also knew that his application is under consideration of MRT. We believe that Mr & Mrs VU is committed genuine and continuing spouse relationship.'

- 29 The document said to be from friends and neighbours contained the signatures beneath the following words :

We have known Mr Van Quang VU and Mrs Nga Thi TRUONG, they are committed living as husband and wife. They are currently residing at 1/71 Koala Road, Moorooka Qld 4105. With the length over three years they married and live together, they involve society and community activities. We believe that they are continuing and genuine spouse relationship as husband and wife therefore we support their application for grants permanent residence.'

The Tribunal's decision

30 The Tribunal hearing was held on 1 July 2003. There had been an earlier hearing in June 2003 which was adjourned because of problems with the interpreter. The Tribunal made its decision on 20 February 2004. The Tribunal affirmed the decision of the delegate to refuse the grant of a Partner (Temporary) (Class UK) Subclass 820 visa.

31 The Tribunal referred to the evidence and said:

'30. On evidence, the Tribunal is not satisfied that the visa applicant meets the requirements of reg 1.15A and 1.15A(3). There is little evidence on the files before the Tribunal to indicate any financial aspects of the spousal relationship. Whilst the visa applicant and the nominator have both stated in their statements that they commenced living in a married relationship in Australia in 1999, little evidence has been provided to substantiate this claim other than a few receipts for household goods some in the couple's name and others in the visa applicant's name only. There is scant evidence contained in the files to indicate any social aspects of the relationship except for some photographs that depict the couple together and a few greeting cards from family and friends. The Tribunal notes two statements signed by a number of third parties states they (the signatories) believe the visa and review applicant's relationship is genuine and that they know them to be married. Given the very general nature of the statements the Tribunal has given them little weight.

31. The Tribunal has concerns about the genuine nature of the relationship. The Tribunal notes that the couple has presented little evidence of the nature of their relationship, the financial aspects, the social aspects or evidence of the couple's genuine commitment to each other to the exclusion of all others. The Tribunal gives weight to the delegate's concerns about conflicting information finding the explanation provided at the hearing not plausible and discrepancies to be evident, in particular as to the visa and review applicant residing together. The Tribunal finds the evidence provided in the matter under review to substantiate the visa applicant's reasons as to why the visa should be granted, very sketchy.'

32 The Tribunal concluded:

'36. ...the Tribunal is unable to reach a finding that the visa and review applicants share a relationship that may be described as genuine and continuing between two spouses within the meaning discussed above. The fact that they are legally married is not determinative of the issue. The evidence before the Tribunal is sketchy. The Tribunal is left in a state of uncertainty as to the visa applicant's intention for marrying

the review applicant. To use the words of His Honour Mr Justice Carr in the decision of Ester Jones v The Minister of State for Immigration and Ethnic Affairs (Full Federal Court, unreported, 6 December 1995) “[t]he decision-making pendulum remained in equilibrium.” This means that the facts necessary to activate an exercise of the relevant statutory power have not been established and this application cannot succeed.’

Application for judicial review

- 33 The visa applicant applied for judicial review of the Tribunal decision. The grounds of the application are as follows:

‘1 The second respondent’s decision was in excess of jurisdiction in that:

- (a) review was not a “proper, genuine and realistic review on the merits”*

Particulars

- (i) The second respondent made no findings of fact or made insufficient findings of fact from which inferences could be drawn;*
- (ii) The second respondent had “concerns” but did not carry out its statutory function of applying the matters set out in reg 1.15A(3) of the Migration Regulations;*
- (b) In breach of s.359A, the second respondent failed to give the applicant particulars of information that the second respondent considered would be the reason or part of the reason for affirming the decision*

Particulars

- (i) The second respondent ought to have informed the applicant of what facts it was that left the second respondent “in a state of uncertainty”;*
- (c) It follows therefore that the second respondent has not conducted a review in accordance with s.348 of the Migration Act.’*

Applicants’ submissions

- 34 During the hearing counsel for the visa applicant abandoned the ground of review referred to in par 1(b) of the application – namely, that there had been a failure by the Tribunal to

comply with s 359A of the *Migration Act 1958* (Cth).

35 Accordingly, the visa applicant relied only on the ground of review that the Tribunal had carried out a review that was not a ‘proper, genuine and realistic review on the merits’. In support of this ground the applicants relied upon the following observations of the Full Federal Court in the case of *WAIJ v Minister for Immigration & Multicultural & Indigenous Affairs* [2004] FCAFC 74, at [21] (*‘WAIJ’*):

‘Failure of the Tribunal to act “judicially” will necessarily stamp the review procedure as one which did not accord an applicant practical fairness or justice. To act “judicially” and according to law the Tribunal must carry out its decision-making function rationally and reasonably and not arbitrarily. (See: Bond per Deane J at 366-367) That is to say, the Tribunal cannot determine the matter by a “tossing a coin” or by making a “snap decision” or by acting on instinct, a “hunch” or a “gut feeling”.

36 In support of this primary submission, the visa applicant argued that the Tribunal had not made adverse findings on credit in respect of the visa applicant and the review applicant. Further, the visa applicant argued that there were no findings of fact on which the Tribunal could draw conclusions. The visa applicant submitted there was no analysis of each of the matters in reg 1.15A(3) of the Regulations. In relation to the financial aspects, there was no analysis of the documents provided in support of the financial aspects of the relationship such as joint telephone bills, joint Commonwealth Bank account and receipts for the payment of household goods.

37 The visa applicant submitted further that the Tribunal had not made any findings as to the ‘crucial issue’ of the applicants’ living arrangements. The Tribunal did not appreciate the nature of a household with separate adult children living elsewhere, especially where there is a grandchild who needs special support. The Tribunal was wrong to accord little weight to the ‘statutory declarations’ made by persons in support of the applicants’ claim. Counsel for the visa applicant argued that there was no reference to the members of the soccer club of which the visa applicant was a member who had signed a document and there was no analysis of the documents or any findings in relation thereto.

38 As to the consideration of commitment to each other in reg 1.15A(3)(d) of the Regulations the visa applicant argued that the Tribunal did not refer to the fact that the review applicant had visited the visa applicant in Vietnam in January 1998, June 1998 and April 1999.

Further, the Tribunal did not refer to the fact that the visa applicant and the review applicant lived with the review applicant's son from the date of his arrival in Brisbane until at least April 2000.

39 Further, counsel for the visa applicant submitted that the Tribunal did not accept the evidence whereby the review applicant and the visa applicant expressed that they were close to each other and loved each other. There was no analysis of the personal relationship between the parties.

40 Counsel for the first respondent argued that the Tribunal had taken into account each of the mandatory considerations and had conducted a proper, genuine and realistic review on the merits. Counsel also submitted that the Tribunal was not obliged to make findings on each item of evidence.

Affidavit evidence

41 At the commencement of the hearing, the visa applicant sought to introduce the affidavit evidence of Agnes Kemens dated 8 September 2004 which exhibited transcript of the hearings before the Tribunal. There were two hearings. The first hearing was adjourned at the instance of the Tribunal because the interpreter appeared to have some difficulty in interpreting what was being said in the proceedings. Counsel for the visa applicant submitted that parts of the transcript showed that there were difficulties with the same interpreter when the visa applicant was interviewed by the Department on 13 June 2002. This meant, said counsel for the visa applicant, that the Tribunal could not conduct a proper review because there were doubts that the interview with the Department was properly interpreted. Counsel for the first respondent argued that the affidavit should not be admitted because firstly, it was not a complete record of the proceedings; and secondly, there was no suggestion in the grounds of the application for review that the visa applicant was relying on an allegation relating to want of proper interpreting at the interview with departmental officers on 13 June 2002.

42 Cooper J said that he would conditionally admit the evidence but would rule on it in his reasons. Whether he would admit the affidavit depended on whether the visa applicant was able to demonstrate a legitimate foundation for the admissibility of the evidence in the

affidavit during the presentation of his case. In the course of his submissions counsel for the visa applicant relied on the transcript in support of his argument that, although the visa applicant gave an explanation for why he was unable to account for the review applicant's whereabouts on 12 June 2002, the Tribunal did not analyse this evidence in its reasons. In my view the use of the transcript in this context fell within the ambit of the grounds of review. However, I would note that the Tribunal appears adequately to record this evidence from the visa applicant, in its reasons. Nevertheless, I am prepared to admit the affidavit for the purposes only of it being used in support of that argument. I would not permit the evidence in the affidavit to be used in support of any argument that the Tribunal did not carry out a proper review because of want of proper interpreting of the interview with the departmental officer on 13 June 2002. In that respect, I accept the submissions of the first respondent that any such argument could only be made had the visa applicant referred to this allegation in his application for judicial review.

Reasoning

43 I do not accept the argument of the visa applicant that the Tribunal committed jurisdictional error by not conducting a proper, genuine and realistic review on the merits. In my view the Tribunal did conduct a review of the delegate's decision which complied with the law.

44 The Tribunal recorded in some detail the evidence before it. It referred to the file note from one of the departmental officers recording the events that occurred when they visited the visa applicant at the unit at Koala Street. It noted the inconsistent accounts that had been given by the visa applicant's son and the review applicant's daughter and daughter in law. The Tribunal also referred to the delegate's decision and especially to the fact that the delegate had expressed concerns that, as a consequence of what had occurred when the departmental officers had visited the unit in Koala Street, the couple did not share the attributes of a spouse relationship. It also referred to the delegate's expressed concern that the visa applicant had provided misleading information in his visa application.

45 The Tribunal also recorded in its reasons that the visa applicant had provided to the Tribunal letters from the Commonwealth Bank stating that the couple had a keycard each, telephone accounts and a letter stating that they had rented a unit since 19 June 2002. The Tribunal also said that the visa applicant had supplied some receipts for goods purchased but noted that not

all of these receipts were in the visa and review applicants' joint names. The Tribunal referred to the statements which had been made by third parties attesting to their knowledge of the visa and review applicants.

46 The Tribunal referred to the evidence that the visa applicant had given about the relationship. This included evidence that he and the review applicant were old friends, that she had visited him in Vietnam before he came to Australia, that he and the review applicant confided in each other and were husband and wife who wanted to build a life together in Australia. The visa applicant also said that his only hobby is soccer and that he and the review applicant present themselves as a married couple to members of the visa applicant's soccer club.

47 The Tribunal also stated that it had put to the visa applicant the concerns expressed by the delegate in relation to his finding that the marriage was not genuine. The Tribunal recorded the visa applicant's comment on the delegate's expressed concerns. As to the allegation that he had provided misleading evidence in his visa application, the visa applicant said that the application had been completed by his migration agent who had not asked him whether he was married. As to the fact that the officers of the bona fides unit had found on 12 June 2002 that the review applicant was not where the officers had been told she was, namely, visiting her daughter Do Nga Huynh, the visa applicant said that at the time he had been unaware that the review applicant had been visiting another daughter with a sick son. The Tribunal also said that it had asked the visa applicant whether it was feasible for the review applicant to have telephoned him to advise that she was staying at another daughter's house, and the visa applicant had replied that it was late at night and that many of the review applicant's children have problems.

48 The Tribunal also stated that the review applicant had said in her evidence that at the time that the departmental officers had visited the unit in Koala Street she had gone to her daughter's home.

49 It is also evident from the reasons that the Tribunal was conscious that in forming an opinion whether the applicants were in a married relationship it was required to have regard to each of the circumstances of the relationship between the visa applicant and the review applicant which are set out in reg 1.15A(3) of the Regulations. The Tribunal expressly referred to the decision in *Nassouh v Minister for Immigration & Multicultural Affairs* [2000] FCA 788 as

holding 'that reg 1.15A(3) set out mandatory considerations'. It then expressly stated that it must, in forming an opinion whether a married relationship or de facto relationship exists, take into account the considerations set out in reg 1.15A(3) of the Regulations. As I have already said, the Tribunal referred at some length to the evidence provided to support each of the considerations. In pars 30 and 31 of the reasons which are referred to above the Tribunal expressly referred to the evidence by reference to each of the considerations in reg 1.15A(3) of the Regulations and said that it had concerns about the genuine nature of the relationship.

50 It was not necessary for the Tribunal to evaluate all the evidence and make specific findings of fact in relation to each item of evidence relied upon in support of the mandatory considerations (*Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323 at 348-349, at [75]). What was essential was that the Tribunal took into account each of the mandatory considerations in coming to its decision. In my view, for the reasons set out above, the Tribunal did take into account the mandatory considerations set out in reg 1.15A(3) of the Regulations and the evidence that was tendered in support of each of the considerations. The weight which the Tribunal accorded to the evidence that was before it in relation to these considerations was a matter for the Tribunal.

51 The visa applicant relied on the observations made in *WAIJ* at [26], [27], [40] and [52] in support of an argument that the Tribunal had disregarded certain documents that had been provided to the Tribunal by the visa applicant. The visa applicant referred specifically to the documents evidencing the joint bank account, the joint phone bills, the receipts and the letter from the landlord in relation to the rental of the unit at Koala Street. In my view, the Tribunal did not disregard the documentary evidence. The Tribunal took the evidence into account. However, in coming to its decision as to whether it was satisfied that there was a genuine and continuing relationship between the visa and review applicants, it regarded the evidence as having limited probative value and so accorded the evidence little weight. The weight which the Tribunal accorded to the documentary evidence was a matter for it. The position is to be contrasted with the situation described in *WAIJ* where the Court was dealing with a situation where the Tribunal had ignored documentary evidence on the basis of adverse credibility findings made by the Tribunal.

52 Further, it was not necessary for the Tribunal to have made general adverse findings of credit in respect of the visa applicant and the review applicant for the Tribunal to conduct a proper

review and to reach the conclusion that it did. The Tribunal was faced with an account by the officers of the Department of the events relating to the visit to the unit at Koala Street. This account revealed that the visa applicant was unable to account for the whereabouts of his wife, the review applicant, and that there were inconsistencies in the account that was given to the officers by the visa applicant's son, the review applicant's daughter and her daughter in law. The Tribunal placed weight on the delegate's concern which was founded on this evidence. It rejected the explanation which the visa applicant gave as to his inability to explain the whereabouts of his wife to the departmental officers as implausible. It was not necessary for the Tribunal to go further and characterise the visa and review applicants as untruthful generally, for it to reach the result that it did, whilst conducting a proper review. In the end, the Tribunal weighed the evidence presented by the applicants but found that, when weighed in the context of all the evidence, their evidence did not carry sufficient weight to provide the Tribunal with the necessary degree of satisfaction. The relative weight which the Tribunal accorded to each item of evidence was a matter for it.

- 53 It follows that I am of the view that the application for judicial review fails and the visa applicant is to pay the costs of the first respondent.

I certify that the preceding fifty-three (53) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Siopis.

Associate:

Dated: 15 December 2005

Counsel for the Applicant:	Mr L Boccabella
Solicitor for the Applicant:	Four Corners Migration
Counsel for the First Respondent:	Mr M Steele
Solicitor for the First Respondent:	Blake Dawson Waldron
Date of Hearing:	Brisbane, 8 September 2004

Date of Judgment:

15 December 2005